In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 817

SUPERINTENDENT FIVE CIVILIZED TRIBES, FOR SANDY FOX, CREEK NO. 1263, petitioner

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of a writ of certiorari in this case.

The petitioner is a full-blood, restricted Creek Indian, a ward of the Federal Government. His properties are held in trust and invested for him by the Superintendent of Five Civilized Tribes under the direction of the Secretary of the Interior. The income from such investments is likewise received and held by the Superintendent in trust for the Indian. During the taxable year the Superintendent accumulated for the benefit of the Indian certain income which was derived from sources

other than the Indian's homestead allotment. The Indian is restricted as to the use of such income. The question is whether such income is subject to Federal income tax. The Circuit Court of Appeals, by a divided court, held that it was, and in so doing in effect overruled its earlier decision in *Blackbird* v. *Commissioner,* 38 F. (2d) 976.

While we think the conclusion reached by the court below is right, we do not feel warranted in opposing the petition for a writ of certiorari. The question presented is one of general public importance. There are a large number of cases now pending involving the question. The question is one of present importance and is likely to arise in many future cases. The final decision in this case will affect not only members of the Five Civilized Tribes, but many restricted Indians of other tribes. While an accurate estimate is not available, the aggregate annual income of the Indians affected is considerable.

Those affected by the decision are wards of the Federal Government, and as such are entitled to every protection. Apparently for this reason this Court has been disposed to review cases involving the rights of Indian wards, even though no conflict has been shown. In *Choteau* v. *Burnet,* 283 U. S. 691, certiorari was granted, despite the fact that there was no conflict. There is no conflict here, nor is any likely to arise, since most of the Indians affected are inhabitants of the Tenth Circuit and their appeals would normally be reviewed by the

court below. In order that these wards of the Government may receive every protection, and in order that the question of the proper procedure to be adopted in cases of this character may be put at rest, we feel that a review by this Court is justified.

Respectfully submitted.

STANLEY REED,
Solicitor General.

APRIL 1935.

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